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VIA ECFS

EX PARTE

May 26, 2010

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: *In the Matter of Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Phoenix, Arizona Metropolitan Statistical Area – WC Docket No. 09-135*

Dear Ms. Dortch:

Qwest Corporation (Qwest) makes this *ex parte* filing in response to the Arizona Corporation Commission's (ACC) Late-Filed Reply Comments in this proceeding.¹

Over the past few years, the ACC has been focused on ensuring that competition flourishes in the Phoenix Metropolitan Statistical Area (MSA). These efforts have resulted in the Phoenix MSA being one of the most competitive in the country with numerous competitors and numerous competitive platforms. Consumers have benefited from these efforts. The market is so competitive that Cox declared just one month ago:

'We are the dominant provider for high-speed Internet, video/cable, and are poised to be the dominant provider for residential telephone service by the end of the year;' 'We are gaining on them [Qwest].'²

And the competition is growing each day with companies like Cox -- already poised to be the dominant player in the residential market -- planning further penetration in the small, medium, and enterprise business markets and CLECs such as tw telecom making substantial inroads into

¹ Late-Filed Reply Comments of the Arizona Corporation Commission, WC Docket No. 09-135, filed, Mar. 2, 2010.

² Ryan Randazzo, *Louisiana Firm to Buy Qwest for \$10.6 Billion*, The Arizona Republic (April 23, 2010) quoting Cox spokesperson Andrea Katsenes).

the business market to build on their industry-leading presence in the Ethernet market. Because of this competition, Qwest finds its market share -- based on the Commission's own methodology -- to be far below the 50% mark and even further below the 60% market share that AT&T possessed when it was found to be non-dominant in the interexchange market.³ In addition to wireline competition, Qwest's market share has been reduced significantly by the 25% of subscribers who have cut-the-cord and moved to wireless service exclusively. As of late 2008 when the Qwest-commissioned wireless study of the Phoenix MSA was conducted, the 25% cut-the-cord percentage was among the highest in the nation. There is little doubt that this percentage has risen since in the Phoenix MSA, as the national average cut-the-cord percentage is now 25% according to the National Center for Health Statistics.⁴ This reduction in Qwest's market share has occurred during a decade in which the population in the Phoenix MSA grew by 27.7%.⁵ And the cut-the-cord rate of 25% does not fully account for the impact that wireless service has on wireline pricing in the market segment that includes customers who maintain wireless service with wireline service. It is this robust competition that has driven Qwest to file its second Petition for Forbearance.

In short, telecommunications competition is sufficiently mature in the Phoenix MSA for the Commission to rely on market forces to discipline Qwest's rates, terms and conditions and eliminate regulations premised on a market structure that no longer exists. The fact is, nearly all mass market and enterprise customers have multiple competitive choices in the Phoenix MSA, and forbearance is justified.

The ACC's reply comments demonstrate the ACC's concern about the impact of deregulation on the state of its local telecommunications markets. However, Qwest respectfully disagrees with the forbearance standard the ACC advocates and its assessment of the state of competition in the Phoenix MSA. Despite tremendous growth in local competition since the *Omaha Forbearance Order*,⁶ the ACC calls for a complete overhaul of the forbearance standard.

³ See *In the Matter of Motion of AT&T Corp. to be Reclassified as a Non-dominant Carrier*, Order, 11 FCC Rcd 3271, 3294 ¶ 40 (1995) (AT&T's market share was 60 percent measured in terms of minutes in 1993).

⁴ According to a survey conducted by the National Center for Health Statistics, in the last six months of 2009, 24.59% of U.S. households did not have a traditional landline telephone, but did have at least one wireless telephone. In addition, another 14.9 % of households are "wireless mostly" and use their wireless phone for nearly all calling. In total, these wireless only and "wireless mostly" households make up almost 40% of households. *Centers for Disease Control and Prevention, National Center for Health Statistics, Wireless Substitution: Early Release of Estimates from the National Health Interview Survey, July-December 2009*, rel. May 12, 2010 at 1.

⁵ See <http://www.maricopa.edu/bwd/pdf/LaborMarketDemographics.pdf>.

⁶ *In the Matter of Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Omaha Metropolitan Statistical Area*, Memorandum Opinion and Order, 20 FCC Rcd 19415 (2005), *pets. for rev. dismissed and denied on the merits*, *Qwest v. FCC*, 482 F.3d 471 (D.C. Cir. 2007).

Since the ACC's proposed standard overlaps with the standard suggested by various CLECs in this proceeding and since Qwest provided a comprehensive response to CLECs' proposed standard in other filings in this proceeding, Qwest will not reiterate those arguments here.⁷

Qwest appreciates the efforts the ACC has undertaken in obtaining and providing data relevant to the Phoenix MSA, though Qwest lacks a meaningful ability to view most of the data, potentially raising concerns under the Administrative Procedure Act.⁸ Nevertheless, Qwest questions many of the conclusions the ACC reaches. Moreover, Qwest is hopeful that the Commission has obtained a complete and accurate set of competitive data for the Phoenix MSA building upon the data provided by Qwest and the ACC. As Qwest has stated, it is essential that the Commission obtain competitive line, customer and coverage data from Cox and the CLECs operating in the Phoenix MSA -- data that is not available to Qwest. It is vital, however, that the Commission focuses on the story the numbers tell. It is all-too-easy to view a glass as half-empty if one ignores the fact that the glass was initially completely empty and now is being rapidly filled.⁹

The ACC argues that Qwest's line loss in the Phoenix MSA is not dispositive of competition because "there are many reasons for the loss, some unrelated to competitive pressures."¹⁰ However, the Commission's own data demonstrate that Qwest's line losses in Arizona are not indicative of customers doing without voice telephone service -- but are indicative of customers moving to intermodal alternatives such as cable, wireless and VoIP. As delineated in the chart below, in the past decade the telephone penetration rates in Arizona have remained steady even as Qwest has been consistently losing residential access lines. This demonstrates that if a customer is dissatisfied with Qwest's rates (or any other aspect of Qwest's

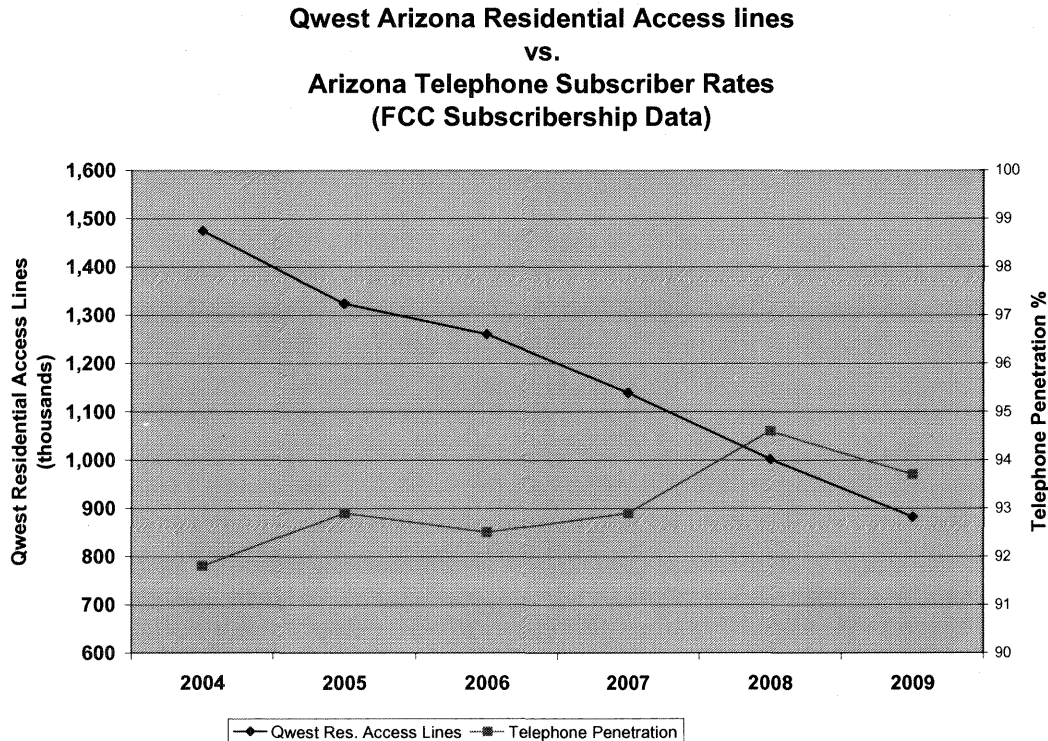
⁷ Comments of Qwest Corporation, WC Docket No. 09-135, filed Apr. 29, 2010 at 7-13 (Qwest Market Power Comments); White Paper prepared by Dr. Dennis Weisman and Dr. Tim Tardiff (Weisman/Tardiff White Paper) ¶¶ 39-44, attached to the Reply Comments of Qwest Corporation, WC Docket Nos. 06-172 and 07-97, filed Oct. 21, 2009 (Qwest Forbearance Remand Reply Comments).

⁸ Under the terms of the Protective Order in this proceeding, Qwest employees are not allowed to view information designated as "highly confidential." See *Second Protective Order*, 24 FCC Rcd 9509 (2009). This is the case even for employees who are not involved in the retail sales or marketing activities of Qwest. While Qwest is allowed to employ outside counsel or third party consultants to review this information, those individuals were not involved in preparing Qwest's Forbearance Petition and generally are not familiar with the market data underlying the ACC's comments. The Protective Order's restrictions on access to highly confidential data therefore significantly undermine Qwest's ability to address the validity of the data submitted by the ACC.

⁹ For instance, the ACC contends that Cox is not a significant player in small, medium, or large business markets. ACC Comments at 8. Qwest described Cox' significant presence in the business market in its Petition and Forbearance Remand Reply Comments (e.g., see Qwest Forbearance Remand Reply Comments at 16-25) and will not repeat that discussion here.

¹⁰ ACC Reply Comments at 16.

service) he or she has the ability to move to a competitive option rather than go “phoneless.”¹¹ The following chart shows Qwest’s decline in Arizona residential access lines along with the FCC’s Arizona penetration rate since 2004:¹²



The purpose of the 1996 Act is to “provide for a pro-competitive, deregulatory national policy framework . . . by opening all telecommunications markets to competition.”¹³ Section 160 of the Act is a crucial element of this framework by promoting competition through deregulation. Competitive policy principles, particularly those rooted in the market power approach that many parties in this proceeding have advocated, recognize the fact that there is no magic market share at which a market is declared competitive. Instead, the key component is whether the market,

¹¹ The ACC argues that wireless service is not a real substitute for wireline service, and attempts to argue that the “cut-the-cord” data provided by Qwest is not valid. Several CLECs made similar claims in their comments in this proceeding, and these were addressed in Qwest’s Forbearance Remand Reply Comments at 30-31 and Exhibit 3.

¹² *Telephone Subscribership In The United States (Data through November 2009)*, Industry Analysis and Technology Division, Wireline Competition Bureau, Federal Communications Commission, rel.: Feb. 2010 at Table 3, See: http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-296121A1.pdf.

¹³ H.R. Conf. Rep. No. 104-458, at 113 (1996), reprinted in 1996 U.S.C.C.A.N. (100 Stat. 5) 124.

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when viewed from a dynamic perspective, evidences the traits of a competitive market. This perspective entails not only an examination of the state of actual competition but the prospects of potential competition as well. It is the competitive process that will ultimately protect customers through lower prices and better products.

The Phoenix MSA exhibits all the characteristics of a market where the competitive process is firmly entrenched. Qwest has been losing access lines at a significant pace to both intramodal and intermodal competition. The number of customers who have "cut-the-cord" is among the highest in the nation. And all indications are that the future will continue to bring more competition. It is exactly the type of market primed for regulation to yield to competition as the means to lower prices and more products.

Sincerely,

/s/Harisha J. Bastiampillai